

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 7 1996
Federal Communications Commission
Office of Secretary

In the Matter of)
)
)

Petition for Declaratory Ruling)
by the Inmate Calling Services)
Providers Task Force)
)

RM-8181

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**RESPONSE TO "REPLY IN SUPPORT OF PETITION
FOR RECONSIDERATION OR STAY"**

Inmate Calling Services Providers Task Force ("Inmate Task Force") hereby responds to the Reply In Support of Petition for Partial Reconsideration or Stay ("Reply") jointly filed on May 28, 1996 by Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., NYNEX Telephone Companies and Pacific Bell and Nevada Bell (collectively, the "Petitioners") in the above-captioned proceeding.

I. Procedural Background and Request for Leave to Respond

On March 21, 1996, Petitioners filed a Petition for Partial Reconsideration or Stay ("Petition") of the Commission's February 20, 1996 Declaratory Ruling. In response, the Inmate Task Force timely filed an Opposition to Petition for Stay on April 4, 1996 ("April 4 Opposition"). The deadline for Petitioners' reply to the April 4 Opposition was April 17, 1996.¹ Petitioners did not file a reply by that date. On April 12, April 17, and May 13, 1996, the Commission released a series of public notices setting and then

¹ 47 C.F.R. §§ 1.04(h), 1.45(b) (replies to oppositions must be filed within five days, excluding holidays, with an additional three days, also excluding holidays, if the opposition was served by mail).

modifying comment and reply comment dates with respect to the Petition and several other challenges to the Declaratory Ruling. None of those public notices changed, much less mentioned, the deadline for replies to the Inmate Task Force's April 4 Opposition.

Only now, in the instant Reply, do Petitioners raise arguments responsive to the April 4 Opposition. Had Petitioners done so in a timely fashion, the Inmate Task Force would have responded to those arguments in its May 17, 1996 Opposition to Petitioners for Reconsideration, Waiver and Stay filed pursuant to the pleading cycle established by the Commission's May 13, 1996 public notice regarding comment deadlines. As things stand, however, Petitioners have placed into the record arguments to which the Inmate Task Force has had no opportunity to respond. Therefore, the Inmate Task Force respectfully requests leave to reply to the Petitioners' Reply, to the extent that Petitioners raise untimely arguments responsive to the April 4 Opposition. The Inmate Task Force limits the scope of its response solely to those arguments. In the alternative, the Inmate Task Force asks the Commission to treat its reply as an *ex parte* response to the Petitioners' Reply.

II. Argument

In response to the April 4 Opposition, Petitioners argue that they should not have to reclassify their inmate calling systems as customer premises equipment ("CPE"), as required by the Declaratory Ruling, because they will be required to reclassify all of their payphone accounts once the Commission issues its final rules implementing Section 316 of the Telecommunications Act of 1996. Reply at 1-2. According to the

Petitioners it is too onerous a burden to ask Petitioners to reclassify some of those accounts now, when they could instead reclassify them all at some later date.

To the extent that there is any burden associated with reclassifying their inmate calling system accounts as required by the Declaratory Ruling in advance of the reclassification of all payphone accounts that will be required by the Commission's rules implementing Section 276, Petitioners would inflict that pain on themselves. Nothing prevents Petitioners from reclassifying any accounts they wish in advance of the Commission's implementation of Section 276. The Declaratory Ruling found that local exchange carriers, including Petitioners, are currently out of compliance with the Commission's rules because of their failure to properly classify inmate calling systems as CPE, and directed that they come into compliance. If Petitioners are correct that compliance with the Declaratory Ruling and with the Commission's Section 276 rules may involve some duplication of effort, then Petitioners should comply early with Section 276, rather than comply late with the Declaratory Ruling.

Two other points raised by Petitioners for the first time in the Reply warrant brief attention. First, Petitioners completely mischaracterize the Inmate Task Force's statement in its Opposition regarding unbundling. The Inmate Task Force did not state that the "Declaratory Ruling does not require exchange carriers to unbundle and tariff the line and central-office-based functions that their inmate-only payphones use." Reply at 3. Instead, the point of the discussion to which Petitioners refer was that if there are, in fact, network services that will need to be unbundled and which are subject to a twelve month disclosure requirement, the fact that Petitioners will require a waiver of the disclosure requirement is no basis for delaying the effectiveness of the Declaratory

Ruling. As set forth more fully in the Inmate Task Force's April 4 Opposition, if Petitioner need a waiver to comply with the Declaratory Ruling, they will also need a waiver to comply with the disclosure rules once the Section 276 rules are adopted. If such a waiver is needed, Petitioners should seek it sooner, rather than later to avoid further delaying the reclassification mandated by the Declaratory Ruling. April 4 Opposition at 5.

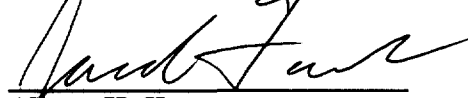
Second, Petitioners respond to the Inmate Task Force's showing that Petitioners completely failed to address, much less meet, the requirements for a stay, with the novel argument that Petitioners are exempt from those requirements. According to Petitioners, the four prong test set out in Washington Metropolitan Transit Comm'n v. Holiday Tours, Inc.² applies only to a stay pending appeal or reconsideration, and not, as is the case here, to a stay pending the effectiveness of some Commission action. Petitioners are flatly wrong. A stay is a stay and all requests for a stay must satisfy the Holiday Tours test. For example, the Wireless Telecommunications Bureau applied Holiday Tours to the requests filed by various parties seeking deferral of the licensing of the A and B block PCS auction winning bidders pending the completion of the C block auction. There, as here, petitioners sought deferral of a Commission decision pending some other affirmative Commission action, rather than deferral pending an appeal or reconsideration. See In the Matter of Deferral of Licensing of MTA Commercial Broadband PCS, 11 FCC Rcd 3214 (Wireless Tel. Bur. 1995). Thus, Petitioners' request for a stay is legally deficient on its face and must be dismissed.

² 559 F.2d 841 (D.C. Cir. 1977).

WHEREFORE, the Inmate Task Force respectfully requests that the Commission order Petitioners to comply with the terms of the Declaratory Ruling.

June 7, 1996

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 1996, a copy of the foregoing Response was sent by first-class mail to the following parties:

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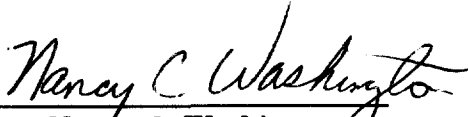
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